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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,515	12/13/2001	Satoshi Mekata	542-003-3	2642
4955 7590 12/30/2008 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468				
EXAMINER FRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
12/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/018,515

Applicant(s)

MEKATA ET AL.

Examiner

ALTON N. PRYOR

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 10/09/08 have been fully considered but they are not persuasive. See argument below. Previous rejections not addressed

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Hiroshi (JP 11-342202; 12/14/99) and Katano et al (JP 10278982; 10/20/97). In Figure 10 of Hiroshi the aerosol device is taught. In Figure 10 reference number 1 represents the can, reference number 3 represents the cylinder, reference number 7 represents the port, reference number 4 represents the piston, reference number 4a represents the nozzle, reference number 7 represents the valve, reference number 6 represents the inner surface, reference 5 represents the first coil spring and reference number 5 represents the second coil spring. Hiroshi does not teach a spring constant to give a ratio of an injection time to a stop time set at 0.1 to 5.0. Hiroshi also does not teach the product contained in the device having 20 to 70% by weight liquefied gas or having 0.1 to 5% by weight compressed gas. However, Katano et al teach aerosol containers being used to dispense liquefied gas and compressed gas. It would have obvious to modify the invention taught by Hiroshi to include the gas types taught by Katano et al since aerosol cans be used to contain the gas types.

Response to Applicants' argument

The Applicants argue that they did not find any disclosure in Katano et al to address the following claim limitations not taught by Hiroshi: a) "a ratio of an injection time to stop time is set to 0.1 to 2.0, when a valve is opened, in order to obtain a sufficient yet not excessive cooling and/or massage effect on the skin" , b) "wherein the product contains 0.1 to 5% by weight of a compressed gas in aerosol composition" or c) "the product contains 20 to 70% by weight of a liquefied gas in an aerosol composition". The Applicants further argue that the Examiner did not indicate a location in Katano et al. where the limitations could be founded. The Examiner argues that in the Katano et al. reference at paragraph 2 is disclosed that aerosol containers can be used to dispense liquefied gas and compressed gas. This disclosure supports the fact that aerosol containers can contain liquefied gas as well as compressed gas. While it is true that Katano et al. do not teach instant specific claimed amount ranges such as 0.1 to 5% by weight compress gas and 20 to 70% by weight liquefied gas, it is well within the skill of an artisan in the field to determine the optimum amounts. An artisan would have been motivated to do this in order to develop the most safe and effective invention. With respect to the ratio of an injection time to stop time of 0.1 to 2.0 set forth in the claims, the Examiner argues that the injection time to stop time is determined by coil selection which makes this limitation a design choice. One skill in the art would know that coil type determines injection time to stop time and that an artisan has the liberty to choose a coil type that would yield the desired injection time to stop time. For the above reasons, the 103(a) rejection is maintained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616